Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

Implementation of Local Competition Provisions of the Telecommunications Act of 1996	))))	CC Docket No. 96-98
Inter-Carrier Compensation For ISP-Bound Traffic	))	CC Docket No. 99-68

Remand of the Commission's Reciprocal Compensation Declaratory Ruling by the U.S. Court of Appeals for the D.C. Circuit

Comments of

Keep America Connected
National Association of the Deaf
National Association of Development Organizations
National Black Chamber of Commerce
New York Institute of Technology
Ocean of Know
Telecommunications for the Deaf, Inc.
United States Hispanic Chamber of Commerce

July 21, 2000

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I. INTRODUCTION

The undersigned organizations welcome the opportunity to respond to the Commission's request for comments on the remand of its Declaratory Ruling by the United States Court of Appeals for the District of Columbia Circuit.

During 1998 and 1999, many of the organizations represented in this filing filed letters and joint comments with the Commission stating that reciprocal compensation payments by incumbent local exchange carriers (ILECs) to competitive local exchange carriers (CLECs) that served Internet Service Providers (ISPs) amounted to hundreds of millions of dollars per year and did not benefit consumers. Monies that could be applied toward investments in the local network for deployment of advanced services and the development and implementation of new products and services to serve all consumers (including persons with disabilities) are going instead to pay reciprocal compensation claims to CLECs. When we filed comments in 1999, ILECs' reciprocal compensation payments to CLECs amounted to hundreds of millions of dollars. Now those payments have grown at an explosive rate and will equal $2 billion in the year 2000.

It is time we do away with reciprocal compensation payments for calls to the Internet. It is an absurd notion that many state public utilities commissions have stated that calls to the Internet are "local" calls. This antiquated interpretation means ILECs must pay CLECs enormous reciprocal compensation fees to terminate calls to an Internet service provider. The Commenters were heartened and agree with the Commission's 1999 Declaratory Ruling which stated "we conclude that ISP-bound traffic is jurisdictionally mixed and **appears to be largely interstate**"[1] (emphasis added).

[1] Federal Communications Commission Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, I. Introduction, page 2.

However, the Commission must clarify the interstate, if not global, nature of calls to the Internet and end the practice of reciprocal compensation payments for such calls. The matters to be addressed in the Commission's review and response to the Court is crucial to achieving the profoundly important goals of local telephone competition and the deployment of advanced services, the primary goals of the Act.

II. STATEMENT OF INTERESTS

Keep America Connected (KAC) is an organization comprised of groups whose demonstrated goals involve promoting a variety of telecommunications issues. The primary goal of KAC is that regardless of income, race, disability, age, ethnicity or geographical location, affordable access to the use of the modem telecommunications infrastructure and services should be available. This goal is best achieved through the rapid development of a fully competitive marketplace that ensures that consumers across the nation will have access to more services at lower prices.

National Association of the Deaf (NAD) is the oldest (founded in 1880) and largest organization representing people with disabilities in the United States. The NAD safeguards the accessibility and civil rights of 28 million deaf and hard of hearing Americans in a variety of areas including education, employment, health care and social services, and telecommunications. A private, non-profit 501(c)(3) organization, NAD is a dynamic federation of 51 state association affiliates, sponsoring and organizational affiliates, and direct members.

National Association of Development Organizations (NADO) is a public interest group founded in 1967 to provide training, information and representation for regional development organizations in small metropolitan and rural America. NADO is the largest and leading advocate for a regional approach to community economic and rural development, including the deployment and upgrading of telecommunications facilities.

National Black Chamber of Commerce (NBCC) is a nonprofit, nonpartisan, nonsectarian organization dedicated to the economic empowerment of African-American communities. The NBCC has 188 affiliated agencies as members. Throughout the 1990s, African-American businesses in the United States posted sales of more than $32 billion annually. In general, African-Americans represent an annual spending base of over $500 billion. NBCC has harnessed much of the power of these dollars and provides unique opportunities for corporations and African-American businesses to partner in creating greater opportunity for all people.

New York Institute of Technology (NYIT) is a fully accredited, nonsectarian and nonprofit institution of higher learning that provides curriculums of education for undergraduate and graduate students. The Institute offers associate, bachelor's and masters degrees and a Doctor of Osteopathy. Courses range from art to architecture to science and engineering to medicine. The Institute maintains campuses on Long Island and in Manhattan.

Ocean of Know is a not-for-profit educational initiative that brings together educators, artists, scientists, engineers and technologists to establish a unique on-line learning environment that will effectively exploit the full range of today's interactive information technologies. This group was formed in 1992 and we have been working closely with the New York Public school system on science education.

Telecommunications for the Deaf, Inc. (TDI) is a national non-profit advocacy organization established in 1968 to promote full visual access for deaf, hard-of-hearing and speech-impaired constituencies to entertainment, information and telecommunications offerings in America. TDI promotes full visual access to these offerings through consumer education and involvement, technical assistance and consulting, application of existing and emerging technologies, networking and collaboration, uniformity of standards and national policy development and advocacy.

United States Hispanic Chamber of Commerce (USHCC) mission is to strength Hispanic business associations at the local, state, and national level. Implementing national programs that assist the economic development of Hispanic firms. Increasing business relationships and partnership between the corporate sector and Hispanic-owned businesses. Celebrating Hispanic Business achievements at the USHCC's Annual National Convention, as well as at Legislative and International events. Promoting international trade between Hispanic businesses in the United States and Latin America. Monitoring legislation, policies and programs that affect the Hispanic business community. Providing technical assistance to Hispanic business associations and entrepreneurs.

III. COMMENTS

The requirements that ILECs pay reciprocal compensation for dial-up calls to the Internet is contrary to the public interest goals of Section 251 and the 1996 Act. In their review of this issue, the Massachusetts Department of Telecommunications and Energy stated:

> The unqualified payment of reciprocal compensation for ISP-bound traffic...does not promote real competition in telecommunications. Rather, it enriches competitive local exchange carriers, Internet service providers, and Internet users at the expense of telephone customers and shareholders. This is done under the guise of what purports to be competition, but is really just an unintended arbitrage

> opportunity derived from regulations that were designed to promote real competition.[2]

The definition of "local" telephone calls under Section 251 was not intended to cover calls to connect one to the Internet. The application of reciprocal compensation payments to CLECs that serve ISPs unfairly rewards these CLECs to the tune of billions of dollars each year, and that figure is growing.

We look to the Commission to ensure that the reciprocal compensation requirements noted in Section 251 do not apply to calls to ISPs or to the CLECs that serve them. We do not understand the rationale for such reciprocal compensation payments. This payment regime does not fulfill the goals of the 1996 Act. The drain in revenues from ILECs to make these payments limits additional and timely investments in the local network and service to their customers. This loss of revenue erodes the ability of ILECs to contribute to the communities that they serve and meet their public interest obligations under the 1996 Act.

The unjust windfall collected by CLECs for reciprocal compensation further discourages competition in the marketplace, particularly competition aimed at residential customers. These CLECs are not competing for local residential customers. They are just going after ISPs as customers to the detriment of the residential telecommunications marketplace. We agree with the sentiment of the Colorado Public Utilities Commission in which they stated:

> [W]e find that reciprocal compensation would introduce a series of unwanted distortions into the market. These include: (1) cross-subsidization of CLECs, ISPs, and Internet users by ILEC's customers who do not use the Internet; (2) excessive use of the Internet; (3) excessive entry into the market by CLECs specializing in ISP traffic mainly for the purpose of receiving compensation from

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[2] Complaint of MCI WorldCom, Inc. against New England Telephone and Telegraph Company, d/a/b, Bell Atlantic-Massachusetts for breach of interconnection terms entered into under Sections 251 and 252 of the Telecommunications Act of 1996, D.T.E. 97-116-C, pp. 25 & 26.

ILECs; and (4) disincentives for CLECs to offer either residential service or advanced services themselves.[3]

Reciprocal compensation also promotes abuse of the system in that some CLECs have established fictitious or meaningless accounts and "service" to receive the windfall of reciprocal compensation payments, even though they serve no customers. The North Carolina Utilities Commission recently found that a CLEC was engaged in a systematic operation aimed at securing reciprocal compensation payments, including establishment of telephone connections in a horse barn[4] that served no customers. The North Carolina Utilities Commission stated:

> US LEC deliberately created a usage imbalance between itself and BellSouth by terminating a greater amount of traffic originating on BellSouth's network than it would be terminating to BellSouth. In furtherance of its plan to create a traffic imbalance and thus large reciprocal compensation revenues for itself, US LEC, among other things, induced MCNC and Metacomm to originate connections on BellSouth's network and terminate them to US LEC telephone numbers by agreeing to pay them 40% of all reciprocal compensation BellSouth paid US LEC for minutes of use for which they were responsible.[5]

Reciprocal compensation payments for calls to the Internet perpetuate a gaming of the system by CLECs and not a commitment to real competition in the marketplace, and drain critical revenues from ILECs. It is its conclusion and findings, the North Carolina Utilities Commission aptly summarized the problems now found in reciprocal compensation payment requirements and its negative impact upon competition and its real harm to consumers. The Commission stated:

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[3] Petition of Sprint Communications Company, L.P. for Arbitration Pursuant to U.S. Code Section 252(b) of the Telecommunications Act of 1996 to Establish and Interconnection Agreement with US West Communications, Inc., Docket No. 00B-011T, Initial Commission Decision, May 2, 2000, p. 22.

[4] "One customer, Charlie Horse Farm, never accessed or attempted to access Metacomm's network. Metacomm nevertheless originated connections from a router located at the horse barn to a terminating router for approximately one year, and US LEC has billed BellSouth reciprocal compensation for all of the minutes of use attributable to the connections established by the router at the horse barn." In the Matter of BellSouth Communications, Inc., Complainant, v. US LEC of North Carolina Inc., Respondent, p. 6.

[5] In the Matter of BellSouth Communications, Inc., Complainant, v. US LEC of North Carolina Inc., Respondent, p. 5.

> ...that validating this network arrangement for the purposes of reciprocal compensation would be ultimately destructive to competition and represents a severe misallocation of resources. Competition in telecommunications is in the public interest because competition promotes the efficient allocation of scarce resources and tends to drive prices to their marginal levels--direct benefits for consumers. The destructiveness arises not only from the draining of resources from existing ILECs but from the incentive to prospective recipients of reciprocal compensation to construct artificial and inefficient networks resulting ultimately in endangerment to the public switched network. [See footnote 12.] In other words, the ultimate effect of validating the practice here would be to discourage the sort of innovation which could be of real benefit to the society at large as well as individual customers.[6]

Reciprocal compensation acts as a disincentive for local competition, which is counter to the goals of the 1996 Act. This drain in revenues and disincentive for enhanced local competition must stop. The lack of competition disproportionately hurts those who stand to benefit the most from new technologies and services at affordable prices -- the poor, inner cities, rural areas, seniors and persons with disabilities. By draining money away from investment in services and products that actually benefit consumers, reciprocal compensation means that local residential customers are effectively subsidizing the CLECs that receive these payments. What will the ILECs be forced to do to recover these costs if the reciprocal compensation payment requirements continue? We have serious concerns that if this trend continues, ILECs may be forced to recover these enormous reciprocal compensation costs from their local telephone customer base, further harming consumers.

We urge the Commission to ensure that ILECs will no longer have to make reciprocal compensation payments for calls to the Internet. We further urge that the affected ILECs continue to invest in the local network, deploy advanced services and

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[6] In the Matter of BellSouth Communications, Inc., Complainant, v. US LEC of North Carolina Inc., Respondent, p. 31 .

develop products and services to serve those most in need. We look to the continued commitments of ILECs to further the goals of the 1996 Act. The additional monies saved could be used to enhance competition and investments in the network, to narrow the gap between the "haves" and "have-nots" and to deploy advanced services in areas not currently served. These actions will confirm the Commission's foresight in its efforts to remove this unfair obstacle towards fulfilling the dream of the 1996 Act.

The Commission's actions in reference to this matter will have a significant impact upon the Act's great promise of ensuring that all Americans have the opportunity to harvest the myriad of benefits to be found in the telecommunications revolution. We urge the Commission to maintain its primary vision and purpose by doing away with this unfair and economically unsound reciprocal compensation payment regime.

Respectively submitted by,

Cleo Manuel

Cleo Manuel, Executive Director
Keep America Connected
P.O. Box 27911
Washington, DC 20005

Aliceann Wohlbruck, Executive Director
National Association of Development Organizations
444 North Capitol Street, NW, Suite 630
Washington, DC 20001

Nancy Bloch, Executive Director
National Association of the Deaf
814 Thayer Avenue
Silver Spring, MD 20910

Harry Alford, President
National Black Chamber of Commerce
1350 Connecticut Ave. NW Suite 825
Washington, DC 20036

Stan Silverman, Director
Technology Based Learning Systems
New York Institute of Technology
P.O. Box 9029
Central Islip, NY 11722

Daniel McVeigh, President
Ocean of Know
178 Dover Furwave Road
Dover Plains, NY 12522

Claude L. Stout, Executive Director
Telecommunications for the Deaf, Inc.
8630 Fenton Street, Suite 604
Silver Spring, MD 20910-3803

George Herrera, President & CEO
United States Hispanic Chamber of Commerce
1019 19th Street, NW
Washington, DC 20003